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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 Judith Scrase,

7 Plaintiff,

8 v.

9 Richard Alexander Scrase and Edna Patricia
Scrase,

10 Defendants.
11

Case No. 2:22-cv-01207-JAD-DJA

**Amended
Report and Recommendation**

12 Plaintiff is proceeding in this action *pro se* and *in forma pauperis*. Upon screening her
13 complaint under 28 U.S.C. § 1915(e), the Court recommended dismissal of her complaint with
14 prejudice because her claims were all time barred. (ECF No. 10). Since the Court entered that
15 recommendation, Plaintiff filed an objection explaining that she neglected to include facts related
16 to tolling in her complaint. (ECF No. 11). She also filed an addendum regarding other
17 circumstances that hindered her from filing her complaint within the applicable statutes of
18 limitations. (ECF No. 12).

19 The assigned district judge—the Honorable District Judge Jennifer A. Dorsey—has
20 referred Plaintiff’s objection to the undersigned magistrate judge to incorporate into an amended
21 report and recommendation. Because Plaintiff’s objection and addendum show that Plaintiff
22 could possibly amend her complaint to include facts demonstrating that the statute of limitations
23 should be tolled such that her claims should pass screening, amendment is not futile. The Court
24 thus amends its recommendation. The Court changes its recommendation that Plaintiff’s
25 complaint be dismissed with prejudice to a recommendation that Plaintiff’s complaint be
26 dismissed without prejudice and with leave to amend.
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I. Background.

A. Plaintiff's complaint.

The crux of Plaintiff's complaint is that her brother Richard Scrase and his wife Edna Scrase¹ abused and financially manipulated Plaintiff's mother, Barbara Gibson-Poole, in the last years of her life. Plaintiff's complaint alleged three² claims: (1) fraud on the court; (2) elder abuse; and (3) false imprisonment. (ECF No. 8 at 24-25). To support her fraud-on-the-court claim, Plaintiff alleges that Richard and Edna purposefully arranged for Gibson-Poole to visit them shortly before a family court hearing scheduled for February 25, 2016. (*Id.* at 12-14). Plaintiff alleges that, by having Gibson-Poole at their home when the hearing took place, Richard and Edna prevented her from attending the hearing. (*Id.*). To support her elder abuse and false imprisonment claim, Plaintiff alleges that Richard and Edna fraudulently obtained testamentary and property-transfer documents favorable to them from Gibson-Poole in March of 2016 and on August 8, 2016 and placed Gibson-Poole in an assisted living facility in September of 2017. (*Id.* at 18-19). Richard and Edna allegedly isolated Gibson-Poole from her family until her death on December 19, 2018. (*Id.*).

B. The initial recommendation.

The Court initially recommended dismissal of each of Plaintiff's claims with prejudice because each claim was time barred. (ECF No. 10). The Court found that Nevada's three-year statute of limitations under NRS 11.190(3)(d) applied to Plaintiff's fraud-on-the-court claim. (*Id.* at 5-7). But because Plaintiff alleged that she attended the February 25, 2016 hearing that Richard and Edna allegedly prevented Gibson-Poole from attending, Plaintiff had notice of her claim on the date of the hearing. (*Id.*). The Court thus found that the statute of limitations for Plaintiff's fraud-on-the-court claim ran in 2019. (*Id.*).

¹ For clarity, the Court refers to Richard Scrase and Edna Scrase by their first names.

² Plaintiff's complaint identifies four claims, but the Court recommended dismissing Plaintiff's "exploitation for financial gain" claim with prejudice because it was identical to her elder abuse claim and thus redundant. (ECF No. 10 at 6). Plaintiff's objection and addendum do not change that recommendation.

1 The Court found that Nevada’s three-year statute of limitations under NRS 11.190(3)(a)
2 applied to Plaintiff’s elder abuse claim and that Nevada’s two-year statute of limitations under
3 NRS 1.190(4)(c) applied to Plaintiff’s false imprisonment claim. (*Id.*). But because the latest
4 date that Gibson-Poole could have experienced Richard and Edna’s abuse or have been falsely
5 imprisoned by them was December 19, 2018, the Court found that statute of limitations ran for
6 Plaintiff’s elder abuse claim in December of 2021 and for her false imprisonment claim in
7 December of 2020. (*Id.*). Because Plaintiff filed her initiating documents with the Court on July
8 27, 2022, the Court recommended that Plaintiff’s claims be dismissed with prejudice because
9 amendment would be futile. (*Id.* at 7).

10 **C. Plaintiff’s objection and addendum.**

11 After the Court entered its report and recommendation, Plaintiff filed an objection,
12 explaining that she had neglected to address tolling in her complaint. (ECF No. 11 at 1). She
13 explained that she was imprisoned from August 12, 2017³ until August 1, 2018 and then on
14 parole until December 13, 2019. (*Id.*). During that time, she “was specifically ordered to have no
15 contact with [her] mother, Barbara B. Gibson-Poole, or involvement in her affairs.” (*Id.* at 2).
16 Plaintiff thus asks for the statute of limitations to run from December 13, 2019, the day she was
17 released from her parole restrictions. (*Id.*).

18 Plaintiff then filed an addendum to her objection. (ECF No. 12). In it, she asks that the
19 Court consider other “unusual circumstances” that prevented her from bringing her case. (*Id.* at
20 1-2). Plaintiff explains that she was under investigation by the Attorney General’s Office since
21 January 26, 2016. (*Id.* at 1-5). She adds that she sought out legal advice to bring her case
22 (although she does not explain when) but that her attorneys were either unable to help her or
23 referred her to the wrong court. (*Id.* at 4-5).

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26 ³ Plaintiff’s addendum provides that she was imprisoned beginning November 14, 2017. (ECF
27 No. 12 at 4). But because Plaintiff asks the Court to toll the statutes of limitations from the time
28 of her release from parole restrictions, which she lists consistently as December 13, 2019, the
Court does not find this discrepancy to impact its amended recommendation.

II. Discussion.

A. Tolling.

When jurisdiction in federal court rests on the parties' diversity of citizenship, the court will apply substantive state law, including state law regarding statutes of limitation and tolling. *G and G Productions LLC v. Rusic*, 902 F.3d 940, 946 (9th Cir. 2018). Nevada statutory law does not toll the statute of limitations for incarcerated individuals. Nev. Rev. Stat. 11.250(3). It is also unclear whether Nevada courts equitably toll statutes of limitations on the basis of incarceration. *See Vonseydewitz v Las Vegas Metro. Police Dep't*, No. 82900, 2021 WL 4238760, at *2 (Nev. Sept. 16, 2021) (unpublished disposition). On the other hand, the Court has not found authority that Nevada courts have determined the equitable tolling analysis totally inapplicable to incarceration.

The Nevada Supreme Court has explained that "[t]he doctrine of equitable tolling is a nonstatutory remedy that permits a court to suspend a limitations period and allow an otherwise untimely action to proceed when justice requires it." *Fausto v. Sanchez-Flores*, 137 Nev. 113, 115-16, 482 P.3d 677, 680 (2021). "A statute of limitations...is primarily intended to prevent surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Id.* (internal citations and quotations omitted). Because the main purpose of a statute of limitations is to encourage the plaintiff to pursue his rights diligently, when an extraordinary circumstance prevents him from bringing a timely action, the restriction imposed by the statute of limitations does not further the statute's purpose. *Id.* (citing *CTS Corp. v. Waldburger*, 573 U.S. 1, 10 (2014)). Accordingly, Nevada courts presume that equitable tolling applies if the period in question is a statute of limitations and if tolling is consistent with the statute. *Id.*

B. Fraud on the court.

The Nevada Supreme Court has concluded that fraud actions are tolled under NRS 11.190(3)(d) until the party bringing the claim "knew or had reason to know that its rights had been violated." *Metropolitan Water Dist. of Southern California v. State*, 99 Nev. 506, 510, 665 P.2d 262, 25 (1983) (citing *Shupe v. Ham*, 98 Nev. 61, 65, 639 P.2d 540, 542 (1982)). However,

1 none of Plaintiff's allegations in her objection or addendum demonstrate that she was unaware
2 that Richard and Edna prevented Gibson-Poole from attending the February 25, 2016 hearing.
3 Plaintiff's complaint appears to allege that Plaintiff was present at that hearing and thus aware
4 that Gibson-Poole was not. (ECF No. 8 at 13-14). And even though Plaintiff alleges that the
5 Attorney General's Office was investigating her beginning on January 26, 2016, she does not
6 explain why that would have prevented her from bringing a civil action related to Richard and
7 Edna's allegedly fraudulent actions. As a result, the statute of limitations began running on
8 February 25, 2016, long before Plaintiff's incarceration. However, given Plaintiff's assertion that
9 she was under investigation during the hearing and the subsequent order that she refrain from
10 interfering with Gibson-Poole's affairs, the Court finds that Plaintiff could potentially amend her
11 complaint to allege facts that would support equitable tolling such that her complaint could pass
12 screening. The Court thus amends its recommendation and recommends that Plaintiff's fraud-on-
13 the-court claim be dismissed without prejudice.

14 **C. Elder abuse.**

15 Under NRS 11.190(3)(a), actions "upon a liability created by statute"—like an elder abuse
16 claim—must be brought within three years. The Nevada Supreme Court has not expressly
17 concluded that equitable tolling applies to the limitations period in NRS 11.190(3)(a). But it has
18 not foreclosed it either. *See U.S. Bank National Association v. 5316 Clover Blossom Ct. Trust*,
19 No. 75861-COA, 2019 WL 5260057, at *2 n.2 (Oct. 16, 2019) (unpublished disposition)
20 (rejecting a party's argument that the statute of limitations under NRS 11.190(3)(a) was equitably
21 tolled not because equitable tolling was entirely inapplicable, but because the party was
22 previously aware of its possible claim). Because Plaintiff could possibly amend her complaint to
23 allege facts sufficient to establish equitable tolling for this claim such that her complaint passes
24 screening, the Court amends its recommendation and recommends that Plaintiff's elder abuse
25 claim be dismissed without prejudice.⁴

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27 ⁴ The Court confined its initial recommendation to the statutes of limitations applicable to each of
28 Plaintiff's claims and did not address the issue of standing. Plaintiff is not purporting to bring
this action on behalf of Gibson-Poole's estate. It is thus unclear whether Plaintiff can

1 been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474
2 U.S. 140, 142 (1985) *reh'g denied*, 474 U.S. 1111 (1986). The Ninth Circuit has also held that
3 (1) failure to file objections within the specified time and (2) failure to properly address and brief
4 the objectionable issues waives the right to appeal the District Court's order and/or appeal factual
5 issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991);
6 *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

7
8 DATED: May 12, 2023



DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE